C.R.No.123/05

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL REVISION PETITION NO.123/2005

Lakshman Prasad & Anr.

Versus.

Smt. Shephali @ Shephali Singh & Ors.

DATE OF ORDER :: 29/11/2006

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. J.P. Goyal, for petitioners
Mr. A.K. Bajpai, for respondent

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Instant revision petition has been filed by the defendants-petitioners against the order dated 24th August, 2005 whereby their application filed under O.7 R.11 CPC was rejected by the learned trial Judge.

Facts, in brief for adjudication of the dispute, are that the plaintiff-respondent Smt. Shephali filed a suit for partition and injunction against the defendants-petitioners who are her parents. It was alleged by her that the suit property is the ancestral property and she has a right to claim her 1/4th share which she is entitled as per provisions of Hindu Succession Act, 1956. After service of summons on the defendants-petitioners, application was filed under O.7 R.11 CPC and simultaneously written statement was also filed. The issues have been framed on the basis of

objection raised by the petitioners in their written statement at this stage. When the application camp up for consideration, objection was raised by the petitioners that irrespective of the fact whether the suit property is a self owned property or ancestral one, plaintiff-respondent has atleast no right to file the suit for partition in view of Section 23 of the Act, 1956. After hearing counsel for parties, the learned trial Judge observed that since the issue with respect to her right for partition of the suit property whether it is a self owned property or ancestral one and so also whether she is entitled to claim partition. Both the issues have been framed and in absence of its proper adjudication, no opinion at this stage can be made and on the basis of pleading which she has made in the plaint and the documents thereto it can be observed at this stage and objections can be considered after parties are permitted to lead evidence in support of their contention.

During the course of arguments, it has been brought to my notice that the amendment has been made u/s.6 of the Hindu Succession Act, 1956 which came into force w.e.f. 9th September, 2005 whereby the daughter by birth has become a co-parcener in her own right to claim partition.

Mr. Goyal submits that since this amendment came into force much after filing of the suit, as such the provisions as existing on the date the suit was filed can only be considered for the purpose of maintainability of the suit.

Without expressing any opinion on merits of the matter, the issues and the submission can be considered with regard to effect of amendment by the court where the suit is pending for adjudication, but from material, which has come on record, I find that the learned trial Judge has not committed any error in observing that the objections, which have been raised, can be adjudicated only after the parties are permitted to lead evidence and since there is no statutory bar which has been shown in filing of the suit the application has no merit for consideration.

I do not find any error committed by the learned trial Judge in recording finding under the order impugned dated 24th August, 2005.

Consequently, the present revision petition fails and is hereby dismissed. Since this is an inter se family dispute and as informed, the parents are 80 years of age and the suit was filed in 2003, the learned trial Judge is directed to dispose of the suit expeditiously.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.